

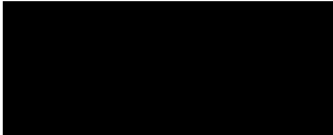


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



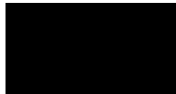
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invasion of personal privacy

File: EAC-00-115-52449

Office: Vermont Service Center

Date: JAN 03 2002

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as an alien of exceptional ability. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Master's degree in Civil Engineering from the State University of New York (SUNY) Buffalo. The petitioner's occupation falls within the pertinent regulatory definition of a profession. As stated by the director, the petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner seeks to work in an area of intrinsic merit, civil engineering, and that the proposed benefits of his work, reduced earthquake damage to bridges and more efficient retrofitting of existing bridges, is national in scope. The petitioner has not demonstrated, however, that he would serve the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The petitioner's argument appears to be that he is an alien of exceptional ability whose work is important and national in scope; therefore, he qualifies for the national interest waiver. We generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. As stated in Matter of New York State Dept. of Transportation, the exceptional ability classification normally requires a labor certification. By seeking an extra benefit, the national interest waiver, the petitioner assumes an extra burden of proof beyond demonstrating exceptional ability even in an area of intrinsic merit with national implications. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. Matter of New York State Dept. of Transportation, *supra*, note 6.

Rowland Richards, Jr., one of the petitioner's professors at SUNY Buffalo, provides general praise of the petitioner's abilities as a student. He also indicates that he served as a reviewer for the petitioner's Master's thesis, stating:

As part of this research, [the petitioner] developed a new computational model for elastomeric dampers and developed a shock absorber for the retrofit of steel bridges. His work was original and is a very important contribution in the field of earthquake engineering.

While the petitioner's research clearly has practical applications, it can be argued that any Master's thesis, in order to be accepted, must offer new and useful information to the pool of knowledge. John B. Mander, in whose research group the petitioner worked at SUNY Buffalo, writes:

First [the petitioner] investigated the computational modeling of elastomeric spring dampers. These are advanced, complex devices that are now being used as a new and innovative way of protecting the nation's infrastructure against seismic hazard. This advanced computational modeling effort was then applied to some very practical problems, and in particular, the retrofit of existing large steel bridges that are seismically vulnerable. His research work has made a very significant contribution to the fundamental science of earthquake engineering.

Since completing this foundational piece of research, two things have happened. First, with another student I was able to experimentally validate [the petitioner's] theoretical work with some large scale tests on bridge substructures in our seismic laboratory. Meanwhile, on graduating, [the petitioner] has gone into engineering practice and has applied many of the lessons learned during his research experience at this University to practical problems that the industry is having to grapple with.

Dr. Mishac Yegian, the Chair of the Civil and Environmental Engineering Department at Northeastern University discusses the lack of seismic considerations in the design of many of the nation's bridges and the importance of retrofitting those bridges. Dr. Yegian then asserts that the petitioner is one of the few people well qualified for utilizing new computer 3D models using ANSYS and ADINA which apply earthquake data. Dr. Yegian continues:

[The petitioner] worked closely with me on the seismic analysis and design of Third Avenue Bridge. He created 3D computer models for this bridge and performed advanced seismic analyses which include many nonlinear features of the bridge, such as the soil-structure interaction, gaps and compression-only supports in the swing span. [The petitioner] changed the design of original fixed bearings and replaced them with lead core bearings which greatly reduced seismic forces on the piles and foundations. He also did a unique design of the concrete piles whose underground portions are enclosed by steel pipes. This feature allows

the aboveground pile portions to crack and deform plastically during earthquakes, while the surfaces of underground pile portions remain crack-free. Therefore, the earthquake damages to the piles are controlled and accessible. This design again greatly reduces the seismic forces on foundations and therefore significantly cuts down the construction cost of the bridge. Also, [the petitioner] has been working on the seismic analysis and capacity evaluation of Manhattan Bridge which is extremely challenging. He overcame many difficulties and is expected to complete the analysis and evaluation in the near future.

Rolan Stamm, the petitioner's supervisor at Hardesty and Hanover, discusses the petitioner's projects during his year at that firm, stating that the petitioner was the only one at the firm to apply non-linear soil-structure interaction. Mr. Stamm writes:

[The petitioner] is full of initiatives. For the seismic analysis, creating [a] 3 dimensional (3D) computer bridge model is the first and a very important step, but is also a really time consuming step. Shortly after his arrival, [the petitioner] made a proposal to develop a converter between two finite element computer programs, LASRA and ADINA. With this converter, engineers can use LASRA, which has a great interface for creating models, to build models. Then, the model can be converted into ADINA, which is a very powerful solver, for analysis. He developed the converter in two weeks, and it significantly cut down the time and money needed for creating 3D models.

Siamak Pourhamidi, an engineer at SIA Engineering who knows the petitioner from seminars, conferences, and bridge projects, writes:

[At Weidlinger Associates, Inc., the petitioner] started working on the seismic analysis on Manhattan suspension bridge. The Manhattan Bridge, which crosses New York's East River, is a major artery connecting the boroughs of Brooklyn and Manhattan and was opened to traffic in 1909. Because of the twenty years' retrofit, the nonlinear interaction between tower caissons and soils, the structural nonlinear behavior of this bridge and the uncertain effects of trains during earthquakes, performing seismic analysis is extremely challenging. Another technical challenging part of this project is the seismic retrofit of those massive masonry piers in the approach spans, which are extremely vulnerable during earthquakes. Since [the petitioner] started working on this project, he overcame many technical difficulties and applied state-of-the-art technologies in his analysis. He tuned the tension cable forces to their initial condition, included nonlinear soil-structure interactions in his analysis, studied the effects of train loads during earthquakes, performed nonlinear push-over analysis on those masonry piers and came up with two retrofit methods for them.

This language is nearly identical to page four of the petitioner's personal statement, only the pronouns are different. The letter is signed by Dr. Pourhamidi; thus, whether or not the language

is his, he affirms the information provided. The evidentiary value of his letter is somewhat diminished, however, as he may be relying on the petitioner's account of his own work.

All of the letters are from the petitioner's professors and collaborators.<sup>1</sup> While these letters are valuable in detailing the petitioner's work, they cannot, by themselves, demonstrate that the petitioner has influenced his field as a whole.

The record contains evidence that the petitioner has authored three articles published in Chinese journals. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of influential contributions; we must consider the research community's reaction to those articles. The record contains no evidence that the petitioner's articles have been cited by independent researchers. Thus, these articles are not evidence that the petitioner has influenced his field as a whole.

On appeal, the petitioner's employer states that he has applied for a labor certification for the petitioner, but that the process is slow. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden.

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<sup>1</sup> Dr. Pourhamidi indicates that in addition to seminars, he knows the petitioner from "bridge projects." Even if his opinion constituted that of an independent expert, he fails to explain how the petitioner has influenced his own work or the work of others in the field.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.